

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
  
)  
Annual Assessment of the Status of )  
Competition in the Market for the ) MB  
Docket No. 05-255  
Delivery of Video Programming )

COMMENTS OF THE CITY OF ONTARIO, CALIFORNIA

1. The City of Ontario, California (Ontario), by its undersigned counsel, submits these comments in response to the Federal Communications Commission's August 12, 2005 Notice of Inquiry (NOI) relating to the above-referenced docket. The Commission's NOI seeks data to evaluate, among other things, the status of competition in the video marketplace; prospects for new entrants to that market; and any factors that have influenced the success or failure of competition in video programming.[1] In a nutshell, Ontario believes that few noteworthy changes, if any, have occurred in its local market since the Commission's 2004 Report on the status of video competition,[2] and that, overall, video competition in our market qualifies as stagnant.[3]

2. Despite enjoying a thriving local economy,[4] Ontario believes that several key factors account for the apparent drag on video competition.

3. For one thing, the regulatory trend lines in recent years have seemed to favor and encourage the idea of a largely national intermodal duopoly between the large cable companies and the former Bell telephone carriers, who would somehow vindicate competition through their eventual respective offerings of indistinguishable triple-play services. This regulatory policy perspective, to be sure, has discouraged entrepreneurs and smaller, regionally-oriented providers from investing in costly last-mile networks.

4. For another, intermodal competition will be a long time

coming, because robust triple-play service in the form of voice, data, and video service will require the former Bells to replace their legacy copper loops with high-speed fiber-optic cable.[5] Moreover, to the extent the former Bells deploy replacement fiber, we strongly suspect they will bypass lower-income neighborhoods in favor of more upscale residential communities.

5. Thus, despite substantial progress over the past 10 years in deploying fiber backbone and transport networks focused on business customers, the major carriers have been slow to drive fiber to the residential customer. And, even where carriers have deployed fiber loops, existing regulatory policy does not require such carriers to provide competitors with access to their fiber loops on a wholesale basis=97as is the case with their copper loops under the Telecom Act.

6. The Commission=92s NOI asks commenters to identify steps Congress and the Commission may take to encourage investment in new broadband networks, and to foster competition.[6] The challenge, in essence, is to establish a new paradigm that opens the last-mile to competition without necessitating the costly over-building of duplicative high-speed networks. The solution, we believe, lies with those numerous municipalities who, having grown understandably impatient with the less-than-rapid replacement of copper networks, have stepped into the regulatory void with the deployment of their own fiber-to-the-home (FTTH) networks.

7. Operating a municipal FTTH system solely as a physical transport network provides the basis for a compelling and attractive solution to the last-mile bottleneck to the customer. Ontario envisions municipal FTTH networks as another form of municipal infrastructure that serves two essential purposes: (a) providing the municipality with an advanced, non-switched private line network for internal municipal purposes; and (b) providing the community with an open-access physical transport network available to any applications provider on a competitively neutral wholesale basis.

8. Whether offering voice, data, or video services, the applications providers competing under such a paradigm may forego the cost of deploying an advanced high-speed physical transport network, and, at the same time, enjoy access to the residential customer on a truly level playing field. In the case of video programming, in particular, the competing applications providers would pay a competitively neutral port charge for transport to the customer=92s

premises, freeing them to compete on the essential bases of brand, product mix, bundling, and price. Thus, Ontario urges Congress and the Commission to eliminate any state or federal legal requirements that may prohibit, or have the effect of prohibiting, the ability of any municipality to deploy and operate a FTTH network.

9. The Commission's NOI also raises questions respecting traditional cable franchising and how it might apply to local exchange companies like Verizon and SBC, who seek to deliver IP video services.[7] From Ontario's perspective, suffice it to say that, regardless of the type of service at issue, we want everyone to follow the same rules for using our public rights-of-way. For us, the granting of a traditional cable franchise stems from our authority to (a) manage the local rights-of-way, and (b) obtain fair and reasonable compensation from any cable operator who relies on the local rights-of-way to deliver video programming services. Under such circumstances, the traditional cable operator is indistinguishable from any incumbent LEC (local exchange carrier) seeking to offer IP video services.[8] Indeed, based on the hit-and-miss availability of DSL services, and to avoid the redlining of lower-income neighborhoods, requiring the LECs to obtain a franchise as a condition of offering IP video would be the only surefire way we know of to compel LECs to offer IP video service to the entire municipality.

\_\_\_\_\_/s/\_\_\_\_\_

J. Jeffrey Mayhook

Laura A. Mayhook

MAYHOOK LAW, PLLC

34808 NE 14th Avenue

La Center, WA 98629

(360) 263-4340

(360) 263-4343 (fax)

Counsel for the City of Ontario

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[1] See, generally, the Commission's NOI in MB Docket No. 05-255 at B6 1.

[2] Implementation of Section 19 of the 1992 Cable Act (Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming), 20 FCC Rcd 2755 (2005) (2004 Report).

[3] Indeed, the sole cable system provider in our market, following Chapter 11 bankruptcy proceedings, was acquired by a larger national cable operator.

[4] Occupying nearly 50 square miles 35 miles east of Los Angeles, pro-business Ontario is known as the Gateway to Southern California. For additional facts about Ontario, visit our website at <http://www.ci.ontario.ca.us/index.cfm/22>.

[5] Both data and video require high bandwidth, and, long-term, copper remains challenged owing to distance limitations. That is, signal loss increases with distance and frequency, and a significant percentage of copper loops lie beyond acceptable distance limits or simply defy loop conditioning when used in conjunction with DSL (digital subscriber line) and IP video services.

[6] See, generally, the Commission's NOI at B6 10.

[7] See, generally, the Commission's NOI at B6 56.

[8] It should be noted that the municipality's ability to assess LECs a

fee for the use of local rights-of-way falls within the purview of state law. As a result, some states permit local governments to charge carriers for access to local rights-of-way, while other states, like California, do not. In principle, however, Ontario believes that a carrier's reliance on a municipality's rights-of-way to provide any commercial services justifies the carrier's payment of fair and reasonable compensation for the use of public rights-of-way.

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**Before**

**FEDERAL COMMUNICATIONS  
COMMISSION**

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